

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 North 5<sup>th</sup> Street  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

02 JUN 10 AM 10:15

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF

Absolute Spa and Pool, Inc.  
3512 Penn Street  
St. Joseph, Missouri 64507

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Docket No. FIFRA 07-2002-0084

CONSENT AGREEMENT AND  
CONSENT ORDER

**PRELIMINARY STATEMENT**

This proceeding for the assessment of civil penalties was initiated on or about February 26, 2002, pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter called FIFRA), 7 U.S.C. §136j, when the United States Environmental Protection Agency (hereinafter referred to as "Complainant") issued a "Complaint and Notice of Opportunity for Hearing" to Absolute Spa and Pool, Inc. (hereinafter referred to as "Respondent").

The Complaint charged Respondent with violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j (a)(1)(A) which states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA.

Subsequently, Complainant and Respondent entered into negotiations in an attempt to resolve the Complaint. This Consent Agreement and Consent Order set forth herein below is the result of these negotiations and represents settlement of this Complaint.

## CONSENT AGREEMENT

It is hereby agreed, and accepted by Respondent, that:

1. This Consent Agreement is being entered into by the Parties in full settlement of, and release from all FIFRA civil penalties that might have attached as a result of the allegations in the Complaint. Respondent has read the Consent Agreement, finds it reasonable and consents to its issuance and its terms and explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Consent Order.

2. Respondent admits the jurisdictional allegations of the Complaint and admits the facts stipulated in this Consent Agreement.

3. Respondent neither admits nor denies the violations of Section 12(a)(1)(A) of the FIFRA, 7 U.S.C. § 136j (a)(1)(A) as set forth in the Complaint and neither admits nor denies that such violations are violations of Section 14 of FIFRA, 7 U.S.C. § 136l.

4. Respondent certifies by signing this Consent Agreement and Consent Order that it is presently in compliance with FIFRA, 7 U.S.C. 136 et seq., and all regulations promulgated thereunder.

5. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

6. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

7. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Consent Order.

8. Respondent consents to the issuance of the Consent Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in Paragraph 2 of this Consent Order.

### **CONSENT ORDER**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136j, and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

1. Respondent shall remain in compliance with FIFRA and all regulations promulgated thereunder.

2. Respondent, in settlement of the allegations set forth in the Complaint, shall pay by cashier's or certified check, a civil penalty, for the violation cited therein, in the amount of Five Hundred Dollars (\$500.00), payable to the "Treasurer, United States of America", and such check shall be mailed to:

EPA-Region VII (Regional Hearing Clerk)  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

The payment shall be identified as **In the Matter of Absolute Spa and Pool, Inc.** A copy of the check shall be forwarded to Kent Johnson, Office of Regional Counsel, Region VII, EPA, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

3. Payment must be received at the above address on or before 30 days after the effective date of the Consent Order (the date by which payment must be received shall hereafter be referred to as the "due date"). The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

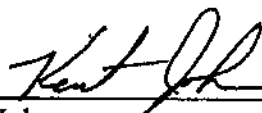
4. Failure to pay the penalty in full according to the above provisions, will result in the referral of this matter to the United States Department of Justice for collection.

5. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

6. This executed Consent Agreement and Consent Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

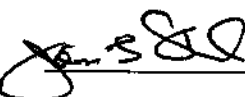
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Kent Johnson  
Attorney  
Office of Regional Counsel

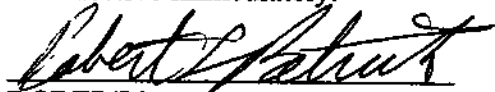
Date: 6/5/02

RESPONDENT:

Absolute Spa and Pool, Inc.

By:   
Title: President Absolute Spa & Pool Inc  
Date: 6-3-02

IT IS SO ORDERED. This Order shall become effective immediately.

A handwritten signature in dark ink, appearing to read "Robert L. Patrick", written over a horizontal line.

ROBERT L. PATRICK

Regional Judicial Officer

U.S. Environmental Protection Agency

Region VII

Date: June 7, 2002

IN THE MATTER OF Absolute Spa and Pool, Inc., Respondent  
Docket No. FIFRA-07-2002-0084

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

James L. Sheridan  
Registered Agent for Absolute Spa and Pool, Inc.  
702 South Woodbine  
St. Joseph, Missouri 64507

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kathy Robinson  
Regional Hearing Clerk